

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.06.2016

CORAM

THE HONOURABLE MR. **JUSTICE M.M.SUNDRESH**

C.S.No.734 of 2015

and

OA.Nos.971 to 973 of 2015 and A.No.5992 of 2015

A.Nos.138 to 141 of 2016 and 2477 of 2016

TTK Health care Limited
represented by its Director & Secretary
S.Kalyanaraman

... Plaintiff

vs.

Mayank Pharmaceuticals
D-12/13, Bhandari Gali,
Varanasi Cantt
Varanasi - 221 002
Uttar Pradesh.

... Defendant

Civil Suit is filed under Order IV Rule 1 of O.S. Rules r/w
Order VII Rule 1 of CPC, Sections 27, 28, 29, 134 and 135 of the
Trade Marks Act, 1999 and Sections 51, 54, 55 and 62 of the
Copyrights Act, 1957.

For Plaintiff : Mr.Arun C. Mohan

For Defendant : Mr.K.Meenakshisundaram

JUDGMENT

Both the parties along with their respective learned counsel on record are present.

2. The suit is filed for the following reliefs:

(a) permanent injunction restraining the defendant, their men, distributors, stockists, wholesalers, servants, agents, successors in business, retailers, legal representatives, assigns or any other person claiming through or under them from in any manner infringing the plaintiff's registered trademark/label in WOODWARD'S Gripe Water label, logo containing the device of a baby and other features by use of deceptively similar mark, label/logo MAYANK GRIPEX for gripe water or any other medicinal preparations or in any manner whatsoever;

(b) permanent injunction restraining the defendant, their men, distributors, stockists, wholesalers, servants, agents, successors in business, retailers, legal representatives, assigns or any other person claiming through or under them from in any manner manufacturing, selling, offering for sale, stocking, advertising, directly or indirectly dealing in products and preparations using a packaging/label/logo MAYANK GRIPEX Gripe Water which is imitative of the plaintiff's trade dress in the WOODWARD'S Gripe Water

packaging/label/logo or any other identical or deceptively similar packaging/label/logo so as to pass off and enable others to pass off the defendant's gripe water, medicinal preparations as and for gripe water, medicinal preparations of the plaintiff or in any other manner whatsoever;

(c)Permanent injunction restraining the defendant, their men, distributors, stockists, wholesalers, servants, agents, successors in business, retailers, legal representatives, assigns or any other person claiming through or under them from in any manner committing acts of copyright infringement by printing, producing, using, selling MAYANK GRIPEX Gripe Water label/package, which is a substantial reproduction of plaintiff's artistic work WOODWARD'S Gripe Water label containing distinctive colour scheme, getup, layout, arrangement of features and other artistic features or in any other manner whatsoever;

(d)the defendant be ordered to surrender to the plaintiff all their gripe water bottles wrapped in imitative trade dress, labels/package, leaflet, brochures, dyes, blocks, screen prints and other materials containing the deceptively similar mark, label/logo MAYANK GRIPEX Gripe water deceptively similar to the plaintiff's WOODWARD'S Gripe Water label/logo with the device of a baby and

other features for destruction purposes;

(e) the defendant be ordered to pay to the plaintiff a sum of Rs.1,00,000/- as liquidated damages for passing off their medicinal preparations as and for the plaintiff's medicinal preparations and for committing trademark/label infringement and copyright infringement by use of imitative trade dress;

(f) a preliminary decree be passed in favour of the plaintiff directing the defendant to render account of profits made by use of the deceptively similar trade mark/label, trade dress and copyright in the artistic work MAYANK GRIPEX Gripe Water amounting to infringement of the plaintiff's registered trademark/label, copyright and passing off and a final decree be passed in favour of the plaintiff for the amount of profits thus found to have been made by the defendant after the latter have rendered accounts;

(g) costs of the suit; and

(h) such further reliefs.

3. Learned counsel appearing for both sides submitted that both the parties have settled the matter between them and they filed a memorandum of compromise dated 20.06.2016 duly signed by them and attested by their respective learned counsel before this Court.

Learned counsel appearing for both sides further submitted that in the said compromise memo, the following clause was omitted to be incorporated and hence, in the decree, the same may be added along with other clauses as stated in the compromise memo: "The defendant agrees to allow the plaintiff or their representative or agents to visit the premises of the defendant and take away the infringing labels".

4. Learned counsel for the plaintiff as well as the defendant submits that the suit may be decreed in terms of the memorandum of compromise dated 20.06.2016, including the further clause as stated above. The terms and conditions of the said compromise memo along with the further clause, read as under:

"The terms 'plaintiff' and 'defendant' shall mean and include its heirs, executors, administrators, successors and assigns of each party.

1. The defendant agrees and acknowledges that the plaintiff is the registered proprietor of the trade mark WOODWARDS GRIPE WATER and copyright in the artistic work, label, logo containing the device of a baby and other features including the colour scheme, get up and layout. The defendant also admits and acknowledges that the plaintiff has the exclusive right in the getup, layout, trade dress

of the products and preparations using the distinct packaging with blue and white colour scheme wrapper with black lettering and inscriptions contained in it.

2. The defendant admits that the use of the MAYANK Gripe water bearing almost identical and/or deceptively similar trademark/label along with colour scheme, get up, layout, arrangement of features and packaging of their product MAYANK GRIPEX GRIPE WATER for the purpose of marketing gripe water or any other medicinal preparations amounts to infringement of the plaintiff's registered trade mark and copyright in the Woodward's Gripe Water label containing the device of a baby and other features.

3. The defendant further undertakes not to manufacture, sell, offer for sale, stock, distribute, advertise, directly or indirectly deal in products and preparations bearing colour scheme, get up, layout arrangement of features and packaging of their product MAYANK GRIPEX GRIPE WATER which is imitative of the plaintiffs trade dress in the Woodward's Gripe Water packaging/logo/label.

4. The defendant further undertakes not to adopt and use the artistic work in plaintiffs

Woodward's Gripe Water label/packaging/logo having distinctive features, colour scheme of blue and white with black lettering, get up, layout and the inscriptions contained thereon by use of imitative label for their MAYANK GRIPEX GRIPE WATER medicinal preparations or any other label amounting to infringement of copyright or in any other manner whatsoever.

5. The plaintiff permits the defendant to market its gripe water product under the name MAYANK GRIPEX GRIPE WATER under a different and distinct artwork, colour, combination, get up, layout and colour scheme as attached in annexure-A which does not infringe the plaintiff's artwork, colour combination, get up, layout and colour scheme. The said changes would be effected by the defendant within 12 weeks of the recording of this memorandum and till such date it shall not indulge in the sale of the infringing labels being the subject matter of the present suit.

6. The defendant agrees to immediately destroy all their infringing labels bearing the deceptively similar trade dress, colour scheme, get up, layout and arrangement of features contained in the defendant's label MAYANK GRIPEX GRIPE WATER along with all packaging, leaflet,

brochures, dyes, blocks, screen prints and other materials containing for destruction purposes.

7. The defendant agrees and undertakes to withdraw trademark/copyright applications filed, if any, for registration of MAYANK GRIPEX GRIPE WATER along with the infringing label/logo/packaging and undertakes not to file for any application bearing identical and/or deceptively similar trademark/ copyright as that of the plaintiff in future also.

8. The defendant agrees that in the event of breach/violation of all or any of the clauses of this memorandum of compromise, they would be liable for any legal proceedings that may be initiated in accordance with law.

9. The plaintiff agrees to give up all other reliefs as claimed in para 25 (e) to (h) by them in the plaint.

10. The defendant and plaintiff shall bear their own costs.

11. The defendant agrees to allow the plaintiff or their representative or agents to visit the premises of the defendant and take away the infringing labels".

5. Accordingly, the suit stands decreed in terms of the memorandum of compromise dated 20.06.2016, including the further clause as stated above and the memorandum of compromise shall form part of the decree. No costs. Consequently, all the applications are closed.

Index:Yes/No

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20.06.2016



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M.M.SUNDRESH, J.

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C.S.No.734 of 2015

20.06.2016

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